

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PROBATE MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-355 of the general  
2 statutes is repealed and the following is  
3 substituted in lieu thereof:

4 The application for admission of a decedent's  
5 will to probate or for administration of a  
6 decedent's estate shall state whether the  
7 decedent, or the spouse or children of the  
8 decedent received aid or care from the state,  
9 including aid or care from the former Veterans'  
10 Home and Hospital Commission or the Department of  
11 Veterans' Affairs. A copy of any application which  
12 states that the decedent, or the spouse or  
13 children of the decedent did receive such aid or  
14 care shall be sent [by certified mail, return  
15 receipt requested,] by the Court of Probate to the  
16 Department of Administrative Services or the  
17 Department of Veterans' Affairs, or both, as the  
18 case may be, and if the Department of  
19 Administrative Services or the Department of  
20 Veterans' Affairs fails to present its claim to  
21 the fiduciary within ninety days from the date of  
22 mailing of such notification or the date of the  
23 appointment of the fiduciary, whichever is later,

24 the Department of Administrative Services or the  
25 Department of Veterans' Affairs, as the case may  
26 be, shall be forever barred from asserting or  
27 recovering on such claim from the fiduciary, the  
28 estate of the decedent or any creditor or  
29 beneficiary of the state.

30 Sec. 2. Section 45a-616 of the general  
31 statutes is repealed and the following is  
32 substituted in lieu thereof:

33 (a) If any minor has no parent or guardian of  
34 his or her person, the court of probate for the  
35 district in which the minor resides may, on its  
36 own motion, appoint a guardian or coguardians of  
37 the person of the minor, taking into consideration  
38 the standards provided in section 45a-617. Such  
39 court shall take of such guardian or coguardians a  
40 written acceptance of guardianship and, if the  
41 court deems it necessary for the protection of the  
42 minor, a probate bond.

43 (b) If any minor has a parent or guardian,  
44 who is the sole guardian of the person of the  
45 child, the court of probate for the district in  
46 which the minor resides may, on the application of  
47 the parent or guardian of such child or of the  
48 Commissioner of Children and Families with the  
49 consent of such parent or guardian and with regard  
50 to a child within the care of the commissioner,  
51 appoint one or more persons to serve as  
52 coguardians of the child. When appointing a  
53 guardian or guardians under this subsection, the  
54 court shall take into consideration the standards  
55 provided in section 45a-617. The court may order  
56 that the appointment of a guardian or guardians  
57 under this subsection take effect immediately or,  
58 upon request of the parent or guardian, upon the  
59 occurrence of a specified contingency, including,  
60 but not limited to, the mental incapacity,  
61 physical debilitation or death of that parent or  
62 guardian. Upon the occurrence of such contingency  
63 and notice thereof by written affidavit to the  
64 probate court by the appointed guardian or  
65 guardians, such appointment shall then take effect  
66 and continue until the further order of the court,  
67 provided the court may hold a hearing to verify  
68 the occurrence of such contingency. The court  
69 shall take of such guardian or coguardians a  
70 written acceptance of guardianship, and if the

71 court deems it necessary for the protection of the  
72 minor, a probate bond.

73 (c) Upon receipt by the court of an  
74 application pursuant to this section, the court  
75 shall set a time and place for a hearing to be  
76 held within thirty days of the application, unless  
77 the court requests an investigation in accordance  
78 with the provisions of section 45a-619, in which  
79 case the court shall set a day for hearing not  
80 more than thirty days following receipt of the  
81 results of the investigation. The court shall  
82 order notice of the hearing to be given to the  
83 minor, if over twelve years of age, by certified  
84 mail, return receipt requested, deliverable to the  
85 addressee only, at least ten days prior to the  
86 date of the hearing. In addition, notice [by  
87 regular mail] shall be given to the petitioner and  
88 all other parties in interest known by the court.

89 (d) The rights and obligations of the  
90 guardian or coguardians shall be those described  
91 in subdivisions (5) and (6) of section 45a-604 and  
92 shall be shared with the parent or previously  
93 appointed guardian of the person of the minor. The  
94 rights and obligations of guardianship may be  
95 exercised independently by those who have such  
96 rights and obligations. In the event of a dispute  
97 between guardians or between a coguardian and a  
98 parent, the matter may be submitted to the court  
99 of probate which appointed the guardian or  
100 coguardian.

101 (e) Upon the death of the parent or guardian,  
102 any appointed guardians of the person of a minor  
103 child shall become the sole guardians or  
104 coguardians of the person of that minor child.

105 Sec. 3. Subsection (a) of section 45a-649 of  
106 the general statutes is repealed and the following  
107 is substituted in lieu thereof:

108 (a) Upon an application for involuntary  
109 representation, the court shall issue a citation  
110 to the following enumerated parties to appear  
111 before it at a time and place named in the  
112 citation, which shall be served on the parties at  
113 least seven days before the hearing date, which  
114 date shall not be more than thirty days after the  
115 receipt of the application by the Court of Probate  
116 unless continued for cause shown. Notice of the  
117 hearing shall be sent within thirty days after  
118 receipt of the application. (1) The court shall

119 direct that personal service be made, by a sheriff  
120 or his deputy, constable or an indifferent person,  
121 upon the following: (A) The respondent, except  
122 that if the court finds personal service on the  
123 respondent would be detrimental to the health or  
124 welfare of the respondent, the court may order  
125 that such service be made upon counsel for the  
126 respondent, if any, and if none, upon the attorney  
127 appointed under subsection (b) of this section;  
128 (B) the respondent's spouse, if any, if the spouse  
129 is not the applicant, except that in cases where  
130 the application is for involuntary representation  
131 pursuant to section 17b-456, and there is no  
132 spouse, the court shall order notice by certified  
133 mail to the children of the respondent and if  
134 none, the parents of the respondent and if none,  
135 the brothers and sisters of the respondent or  
136 their representatives, and if none, the next of  
137 kin of such respondent. (2) The court shall order  
138 such notice as it directs to the following: (A)  
139 The applicant; (B) the person in charge of welfare  
140 in the town where the respondent is domiciled or  
141 resident and if there is no such person, the first  
142 selectman or chief executive officer of the town  
143 if the respondent is receiving assistance from the  
144 town; (C) the Commissioner of Social Services, if  
145 the respondent is in a state-operated institution  
146 or receiving aid, care or assistance from the  
147 state; (D) [by registered or certified mail, to]  
148 the Administrator of Veterans Affairs if the  
149 respondent is receiving veterans' benefits or the  
150 Veterans Home and Hospital, or both, if the  
151 respondent is receiving aid or care from such  
152 hospital, or both; (E) the Commissioner of  
153 Administrative Services, if the respondent is  
154 receiving aid or care from the state; (F) the  
155 children of the respondent and if none, the  
156 parents of the respondent and if none, the  
157 brothers and sisters of the respondent or their  
158 representatives; (G) the person in charge of the  
159 hospital, nursing home or some other institution,  
160 if the respondent is in a hospital, nursing home  
161 or some other institution. (3) The court, in its  
162 discretion, may order such notice as it directs to  
163 other persons having an interest in the respondent  
164 and to such persons the respondent requests be  
165 notified.

166 Sec. 4. Section 45a-671 of the general  
167 statutes is repealed and the following is  
168 substituted in lieu thereof:

169 (a) Within forty-five days of filing such  
170 application in the Court of Probate, such court  
171 shall assign a time and place for hearing such  
172 application. Notwithstanding the provisions of  
173 section 45a-7, the court may hold the hearing on  
174 said application at a place within the state other  
175 than its usual courtroom if it would facilitate  
176 the presence of the respondent. Such court shall  
177 cause a citation and notice to be served upon the  
178 respondent by personal service made by a sheriff  
179 or his deputy, constable or an indifferent person  
180 not less than seven days prior to such hearing  
181 date.

182 (b) The court shall direct notice [by  
183 certified mail] to the following: (1) The parents  
184 of the respondent, provided the parents are not  
185 the applicants; (2) the spouse of the respondent,  
186 provided the spouse is not the applicant; (3)  
187 children of the respondent, if any; (4) the person  
188 in charge of the hospital, nursing home,  
189 residential facility or other institution in which  
190 the respondent may reside.

191 (c) The court shall order such notice as it  
192 directs to the following: (1) The applicant; (2)  
193 the siblings of the respondent or their  
194 representatives, if the respondent has no living  
195 parents, and spouse or children of the respondent.

196 (d) The court in its discretion may order  
197 such notice as it directs to other persons having  
198 an interest in the respondent.

199 Sec. 5. Section 45a-764 of the general  
200 statutes is repealed and the following is  
201 substituted in lieu thereof:

202 (a) Notwithstanding the provisions of section  
203 45a-727, the Adoption Review Board may, upon  
204 application, notice and hearing as hereinafter  
205 provided, for cause shown that it is in the best  
206 interests of the minor child, waive the  
207 requirement that the minor child be placed by the  
208 Commissioner of Children and Families or a  
209 child-placing agency.

210 (b) Any judge of probate who has had  
211 presented to him an application for adoption which  
212 may not proceed because the child has not been so

213 placed may apply in writing to the Adoption Review  
214 Board for a waiver of such requirement.

215 (c) Upon receipt of the application, the  
216 chairman of the board shall set a time and place  
217 for a hearing and cause notice to be sent [by  
218 registered or certified mail] to the judge of  
219 probate and to all parties entitled to notice in  
220 the adoption proceeding.

221 (d) The hearing shall be held not less than  
222 ten days nor more than thirty days after the  
223 receipt of the application. The parties entitled  
224 to notice shall be given notice at least ten days  
225 prior to the hearing.

226 (e) Any party to the adoption proceedings  
227 shall have the right to present such evidence as  
228 is deemed necessary and relevant to the board.  
229 After hearing the evidence the board may deny the  
230 application or approve the application in which  
231 case the chairman shall notify the court of  
232 probate that the adoption may proceed and that the  
233 requirement of placement by the Commissioner of  
234 Children and Families or a child-placing agency is  
235 waived.

236 (f) If the court of probate thereafter grants  
237 the adoption application, there shall be included  
238 in the decree a finding that the placement  
239 requirements of section 45a-727 have been waived  
240 by the Adoption Review Board.

241 (g) No such waiver may be granted if the  
242 board determines that the adoption proceeding  
243 would violate the public policy of the state  
244 against the obtaining of children by illegal means  
245 for adoption purposes.

246 Sec. 6. Subsection (g) of section 19a-265 of  
247 the general statutes is repealed and the following  
248 is substituted in lieu thereof:

249 (g) A petition by a director of health for a  
250 commitment order pursuant to subdivision (5) of  
251 subsection (c) of this section shall be heard by  
252 the probate court for the district in which the  
253 subject of such petition resides within three  
254 business days of receipt of such petition [The]  
255 OR, IF A MOTION IS MADE FOR APPOINTMENT OF A  
256 THREE-JUDGE COURT, WITHIN THREE BUSINESS DAYS OF  
257 THE FILING OF SUCH MOTION. UPON THE MOTION OF THE  
258 RESPONDENT OR OF THE JUDGE OF PROBATE FOR  
259 APPOINTMENT OF A THREE-JUDGE COURT, THE Probate  
260 Court Administrator shall appoint a three-judge

261 court from among the several judges of probate to  
262 conduct the hearing. Such three-judge court shall  
263 consist of at least one judge who is an  
264 attorney-at-law admitted to practice in this  
265 state. The judge of probate having jurisdiction  
266 under the provisions of this section shall be a  
267 member, provided such judge may disqualify  
268 himself, in which case all three members of such  
269 court shall be appointed by the Probate Court  
270 Administrator. Such three-judge court when  
271 convened shall be subject to all of the provisions  
272 of law as if it were a single-judge court. The  
273 involuntary confinement of a person under this  
274 section BY A THREE-JUDGE COURT shall not be  
275 ordered by the court without the vote of at least  
276 two of the three judges convened hereunder. The  
277 judges of such court shall designate a chief judge  
278 from among their members. All records for any case  
279 before the three-judge court shall be maintained  
280 by the court of probate having jurisdiction over  
281 the matter as if the three-judge court had not  
282 been appointed. The court shall cause such  
283 advanced notice as it directs thereof to be given  
284 to the person who is the subject of the order and  
285 such other persons as it may direct. The hearing  
286 shall be held to determine: (1) If the person has  
287 active tuberculosis; (2) if the person is  
288 unwilling or unable to adhere to an appropriate  
289 prescribed course of treatment for tuberculosis;  
290 (3) if efforts have been made to educate and  
291 counsel the person about the need to complete the  
292 course of treatment; (4) if reasonably appropriate  
293 enablers and incentives have been provided to the  
294 person to facilitate the completion of treatment  
295 by that person; (5) if the person has a  
296 demonstrated pattern of persistent nonadherence to  
297 treatment for tuberculosis; (6) if commitment for  
298 the purposes of completion of the prescribed  
299 course of treatment for active tuberculosis is  
300 necessary to prevent the development of  
301 drug-resistant tuberculosis organisms; and (7)  
302 whether the order is necessary and is the least  
303 restrictive available to protect the public health  
304 in that other less restrictive alternatives to  
305 encourage that person's adherence to the  
306 prescribed course of treatment for tuberculosis  
307 have failed. The Probate Court may issue a warrant  
308 for the apprehension of a person who is the

309 subject of an order for commitment, and a police  
310 officer for the town in which such court is  
311 located, or if there is no such police officer  
312 then the state police or such other officer as the  
313 court may determine, shall deliver the person to  
314 the place for confinement as determined by the  
315 health director and as specified in subsection (d)  
316 of this section.

317 Sec. 7. Section 46b-172a of the general  
318 statutes, as amended by section 24 of public act  
319 97-7 of the June 18 special session, is repealed  
320 and the following is substituted in lieu thereof:

321 (a) Any person claiming to be the father of a  
322 child born out of wedlock may at any time but no  
323 later than sixty days after the date of notice  
324 under section 45a-716, file a claim for paternity  
325 with the court of probate for the district in  
326 which either the mother or the child resides, on  
327 forms provided by such court. The claim shall  
328 contain the claimant's name and address, the name  
329 and last-known address of the mother and the month  
330 and year of the birth or expected birth of the  
331 child. Within five days after the filing of a  
332 claim for paternity, the judge of the court of  
333 probate shall cause a certified copy of such claim  
334 to be mailed by certified mail to (1) the vital  
335 records section of the Department of Public Health  
336 and (2) to the mother or prospective mother of  
337 such child at the last-known address shown on the  
338 claim for paternity. The claim for paternity shall  
339 be admissible in any action for paternity under  
340 section 46b-160, and shall estop the claimant from  
341 denying his paternity of such child and shall  
342 contain language that he acknowledges liability  
343 for contribution to the support and education of  
344 the child after its birth and for contribution to  
345 the pregnancy-related medical expenses of the  
346 mother.

347 (b) If a claim for paternity is filed by the  
348 father of any minor child born out of wedlock, the  
349 court of probate shall schedule a hearing on such  
350 claim, send notice of the hearing to all parties  
351 involved and proceed accordingly.

352 (c) The child shall be made a party to the  
353 action. Said child shall be represented by a  
354 guardian ad litem appointed by the court AND  
355 COMPENSATED in accordance with section 45a-708.  
356 [Payment shall be made in accordance with such



357 section from the Probate Court Administration  
358 Fund.]

359 (d) In the event that the mother or the  
360 claimant father is a minor, the court shall  
361 appoint a guardian ad litem to represent him or  
362 her in accordance with the provisions of section  
363 45a-708. [Payment shall be made in accordance with  
364 said section from the Probate Court Administration  
365 Fund.] THE GUARDIAN AD LITEM SHALL BE COMPENSATED  
366 IN ACCORDANCE WITH SECTION 45a-708.

367 (e) Upon the motion of the putative father,  
368 the mother, or his or her counsel, or the judge of  
369 probate having jurisdiction over such application,  
370 filed not later than three days prior to any  
371 hearing scheduled on such claim, the Probate Court  
372 Administrator shall appoint a three-judge court  
373 from among the several judges of probate to hear  
374 such claim. Such three-judge court shall consist  
375 of at least one judge who is an attorney-at-law  
376 admitted to practice in this state. The judge of  
377 the court of probate having jurisdiction over such  
378 application under the provisions of this section  
379 shall be a member, provided such judge may  
380 disqualify himself in which case all three members  
381 of such court shall be appointed by the Probate  
382 Court Administrator. Such three-judge court when  
383 convened shall have all the powers and duties set  
384 forth under sections 17a-75 to 17a-83, inclusive,  
385 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528,  
386 inclusive, 17a-540 to 17a-550, inclusive, 17a-560  
387 to 17a-576, inclusive, and 17a-615 to 17a-618,  
388 inclusive, and shall be subject to all of the  
389 provisions of law as if it were a single-judge  
390 court. The judges of such court shall designate a  
391 chief judge from among their members. All records  
392 for any case before the three-judge court shall be  
393 maintained in the court of probate having  
394 jurisdiction over the matter as if the three-judge  
395 court had not been appointed.

396 (f) By filing a claim under this section, the  
397 putative father submits to the jurisdiction of the  
398 court of probate.

399 (g) Once alleged parental rights of the  
400 father have been adjudicated in his favor under  
401 subsection (b) of this section, or acknowledged as  
402 provided for under section 46b-172, his rights and  
403 responsibilities shall be equivalent to those of  
404 the mother, including those rights defined under

405 section 45a-606. Thereafter, disputes involving  
406 custody, visitation or support shall be  
407 transferred to the Superior Court under chapter  
408 815j, except that the probate court may enter a  
409 temporary order for custody, visitation or support  
410 until an order is entered by the Superior Court.

411 (h) Failing perfection of parental rights as  
412 prescribed by this section, any person claiming to  
413 be the father of a child born out of wedlock (1)  
414 who has not been adjudicated the father of such  
415 child by a court of competent jurisdiction, or (2)  
416 who has not acknowledged in writing that he is the  
417 father of such child, or (3) who has not  
418 contributed regularly to the support of such child  
419 or (4) whose name does not appear on the birth  
420 certificate shall cease to be a legal party in  
421 interest in any proceeding concerning the custody  
422 or welfare of the child, including but not limited  
423 to guardianship and adoption, unless he has shown  
424 a reasonable degree of interest, concern or  
425 responsibility for the child's welfare.

426 (i) Notwithstanding the provisions of this  
427 section, after the death of the father of a child  
428 born out of wedlock, a party deemed by the court  
429 to have a sufficient interest may file a claim for  
430 paternity on behalf of such father with the  
431 probate court for the district in which either the  
432 putative father resided or the party filing the  
433 claim resides. If a claim for paternity is filed  
434 pursuant to this subsection, the court of probate  
435 shall schedule a hearing on such claim, send  
436 notice of the hearing to all parties involved and  
437 proceed accordingly.

438 Sec. 8. Section 45a-724 of the general  
439 statutes is repealed and the following is  
440 substituted in lieu thereof:

441 (a) The following persons may give a child in  
442 adoption:

443 (1) A statutory parent appointed under the  
444 provisions of section 17a-112, section 45a-717 or  
445 section 45a-718 may, by written agreement, subject  
446 to the approval of the Court of Probate as  
447 provided in section 45a-727, give in adoption to  
448 any adult person any minor child of whom he is the  
449 statutory parent; provided, if the child has  
450 attained the age of twelve, the child shall  
451 consent to the agreement.

452 (2) Subject to the approval of the Court of  
453 Probate as provided in section 45a-727, any parent  
454 of a minor child may agree in writing with his or  
455 her spouse that the spouse shall adopt or join in  
456 the adoption of the child; if that parent is (A)  
457 the surviving parent if the other parent has died;  
458 (B) the mother of a child born out of wedlock,  
459 provided that if there is a putative father who  
460 has been notified under the provisions of section  
461 45a-716, the rights of the putative father have  
462 been terminated; (C) a former single person who  
463 adopted a child and thereafter married; or (D) the  
464 sole guardian of the person of the child, if the  
465 other parent's parental rights have been  
466 terminated. [or the other parent has been removed  
467 as guardian of the person before October 1, 1973.]

468 (3) Subject to the approval of the Court of  
469 Probate as provided in section 45a-727, the  
470 guardian or guardians of the person of any minor  
471 child who is free for adoption in accordance with  
472 section 45a-725 may agree in writing with a  
473 relative that the relative shall adopt the child.  
474 For the purposes of this subsection "relative"  
475 shall include, but not be limited to, a person who  
476 has been adjudged by a court of competent  
477 jurisdiction to be the father of a child born out  
478 of wedlock, or who has acknowledged his paternity  
479 under the provisions of section 46b-172a, with  
480 further relationship to the child determined  
481 through the father.

482 (b) If all parties consent to the adoption  
483 under subdivisions (2) and (3) of subsection (a)  
484 of this section, then the application to be filed  
485 under section 45a-727 shall be combined with the  
486 consent termination of parental rights to be filed  
487 under section 45a-717. An application made under  
488 subdivisions (2) and (3) of subsection (a) of this  
489 section shall not be granted in the case of any  
490 child who has attained the age of twelve without  
491 the child's consent.

492 Sec. 9. Section 45a-725 of the general  
493 statutes is repealed and the following is  
494 substituted in lieu thereof:

495 A minor child shall be considered free for  
496 adoption and the Court of Probate may grant an  
497 application for the appointment of a statutory  
498 parent if any of the following have occurred: (a)  
499 The child has no living parents; [(b) the parents

500 were removed as guardians of the person before  
501 October 1, 1973, in accordance with the provisions  
502 of Connecticut law in effect before October 1,  
503 1973; (c)] (b) all parental rights have been  
504 terminated under Connecticut law; [(d)] (c) (1) in  
505 the case of any child from outside the United  
506 States, its territories or the Commonwealth of  
507 Puerto Rico placed for adoption by the  
508 Commissioner of Children and Families or by any  
509 child-placing agency, the petitioner has filed an  
510 affidavit that the child has no living parents or  
511 that the child is free for adoption and that the  
512 rights of all parties in connection with the child  
513 have been properly terminated under the laws of  
514 the jurisdiction in which the child was domiciled  
515 before being removed to the state of Connecticut;  
516 or (2) in the case of any child from any of the  
517 United States, its territories or the Commonwealth  
518 of Puerto Rico placed by the Commissioner of  
519 Children and Families or a child-placing agency,  
520 the petitioner has filed an affidavit that the  
521 child has no living parents or has filed in court  
522 a certified copy of the court decree in which the  
523 rights of all parties in connection with the child  
524 have been terminated under the laws of the  
525 jurisdiction in which the child was domiciled  
526 before being removed to the state of Connecticut,  
527 and the child-placing agency obtained guardianship  
528 or other court authority to place the child for  
529 adoption. If no such affidavit or certified decree  
530 has been filed, then termination of parental  
531 rights proceedings shall be required.

532 Sec. 10. Section 45a-175 of the general  
533 statutes, as amended by section 3 of public act  
534 97-90, is repealed and the following is  
535 substituted in lieu thereof:

536 (a) Courts of probate shall have jurisdiction  
537 of the interim and final accounts of testamentary  
538 trustees, trustees appointed by the courts of  
539 probate, conservators, guardians, persons  
540 appointed by probate courts to sell the land of  
541 minors, executors, administrators and trustees in  
542 insolvency, and, to the extent provided for in  
543 this section, shall have jurisdiction of accounts  
544 of the actions of trustees of inter vivos trusts  
545 and attorneys-in-fact acting under powers of  
546 attorney.

547 (b) A trustee or settlor of an inter vivos  
548 trust or an attorney-in-fact or the successor of  
549 the trustee, settlor or attorney-in-fact or the  
550 grantor of such power of attorney or his legal  
551 representative may make application to the court  
552 of probate for the district where the trustee, OR  
553 ANY ONE OF THEM, or the attorney-in-fact has [his  
554 or its principal] ANY place of business or to the  
555 court of probate for the district where the  
556 trustee or any one of them or the settlor or the  
557 attorney-in-fact or the grantor of the power  
558 resides or, in the case of a deceased settlor or  
559 grantor, to the court of probate having  
560 jurisdiction over the estate of the settlor or  
561 grantor OR FOR THE DISTRICT IN WHICH THE SETTLOR  
562 OR GRANTOR RESIDED IMMEDIATELY PRIOR TO DEATH for  
563 submission to the jurisdiction of the court of an  
564 account for allowance of the trustee's or  
565 attorney's actions under such trust or power.

566 (c) (1) Any beneficiary of an inter vivos  
567 trust may petition a court of probate having  
568 jurisdiction under this section for an accounting  
569 by the trustee or trustees. The court may, after  
570 hearing with notice to all interested parties,  
571 grant the petition and require an accounting for  
572 such periods of time as it determines are  
573 reasonable and necessary on finding that: (A) The  
574 beneficiary has an interest in the trust  
575 sufficient to entitle him to an accounting, (B)  
576 cause has been shown that an accounting is  
577 necessary, and (C) the petition is not for the  
578 purpose of harassment.

579 (2) A court of probate shall have  
580 jurisdiction to require an accounting under  
581 subdivision (1) of subsection (c) of this section  
582 if (A) a trustee of the trust resides in its  
583 district, (B) in the case of a corporate trustee,  
584 the trustee has [its principal] ANY place of  
585 business in the district, (C) any of the trust  
586 assets are maintained or evidences of intangible  
587 property of the trust are situated in the  
588 district, or (D) the settlor resides in the  
589 district, OR, IN THE CASE OF A DECEASED SETTLOR,  
590 RESIDED IN THE DISTRICT IMMEDIATELY PRIOR TO  
591 DEATH.

592 (3) As used in subdivision (1) of subsection  
593 (c) of this section, "beneficiary" means any  
594 person currently receiving payments of income or

595 principal from the trust, or who may be entitled  
596 to receive income or principal or both from the  
597 trust at some future date, or the legal  
598 representative of such person.

599 (d) The action to submit an accounting to the  
600 court, whether by an inter vivos trustee or  
601 attorney acting under a power of attorney or  
602 whether pursuant to petition of another party,  
603 shall not subject the trust or the power of  
604 attorney to the continuing jurisdiction of the  
605 probate court.

606 (e) If the court finds such appointment to be  
607 necessary and in the best interests of the estate,  
608 the court upon its own motion may appoint an  
609 auditor to be selected from a list provided by the  
610 Probate Court Administrator, to examine accounts  
611 over which the court has jurisdiction under this  
612 section, except those accounts on matters in which  
613 the fiduciary or cofiduciary is a corporation  
614 having trust powers. The Probate Court  
615 Administrator shall promulgate regulations in  
616 accordance with section 45a-77 concerning the  
617 compilation of a list of qualified auditors. Costs  
618 of the audit may be charged to the fiduciary, any  
619 party in interest and the estate, in such  
620 proportion as the court shall direct if the court  
621 finds such charge to be equitable. Any such share  
622 may be paid from the fund established under  
623 section 45a-82, subject to the approval of the  
624 Probate Court Administrator, if it is determined  
625 that the person obligated to pay such share is  
626 unable to pay or to charge such amount to the  
627 estate would cause undue hardship.

628 (f) Upon the allowance of any such account,  
629 the court shall determine the rights of the  
630 fiduciaries or the attorney-in-fact rendering the  
631 account and of the parties interested in the  
632 account, subject to appeal as in other cases. The  
633 court shall cause notice of the hearing on the  
634 account to be given in such manner and to such  
635 parties as it directs.

636 (g) In any action under this section, the  
637 Probate Court shall have, in addition to powers  
638 pursuant to this section, all the powers available  
639 to a judge of the Superior Court at law and in  
640 equity pertaining to matters under this section.

641 Sec. 11. Section 45a-151 of the general

642 statutes is repealed and the following is  
643 substituted in lieu thereof:

644 (a) Upon application by executors, guardians,  
645 conservators, administrators, trustees in  
646 insolvency and trustees appointed, or whose  
647 appointment has been approved, by the Court of  
648 Probate, the court may, after [public] notice and  
649 hearing, authorize such fiduciaries to compromise  
650 and settle any doubtful or disputed claims or  
651 actions, or any appeal from probate in favor of or  
652 against the estates or persons represented by  
653 them.

654 (b) In order to accomplish such compromise or  
655 settlement, the court may authorize the  
656 conveyance, with or without requiring a bond, of  
657 the whole or any part of, or any easement or other  
658 interest in, any real property situated in this  
659 state forming part of the trust estate or owned by  
660 any such trustee, executor or administrator or  
661 owned by any deceased person, ward or incapable  
662 person for whom such an executor, guardian,  
663 conservator or administrator was appointed.

664 Sec. 12. Section 45a-376 of the general  
665 statutes is repealed and the following is  
666 substituted in lieu thereof:

667 The Court of Probate shall [direct the  
668 fiduciary of the estate of a deceased person which  
669 is represented to be insolvent to publish  
670 newspaper notice and to give notice to such  
671 persons as the court may direct to appear if they  
672 see cause before the court, at a time and place  
673 appointed by it and designated in such notice, to  
674 be heard relative to such representation] CAUSE A  
675 NOTICE OF THE ALLEGED INSOLVENCY OF AN ESTATE, OF  
676 THE RIGHT OF INTERESTED PERSONS TO BE HEARD  
677 RELATIVE TO THE REPRESENTATION OF INSOLVENCY, AND  
678 OF THE TIME, DATE AND PLACE OF HEARING, TO BE (1)  
679 PUBLISHED IN A NEWSPAPER HAVING A GENERAL  
680 CIRCULATION IN THE PROBATE DISTRICT, AND (2) GIVEN  
681 TO SUCH INTERESTED PERSONS AS THE COURT MAY  
682 DIRECT. After hearing, the court shall determine  
683 whether such estate shall be declared insolvent  
684 and shall send a copy of the decree to all persons  
685 in interest.

686 Sec. 13. Section 45a-485 of the general  
687 statutes is repealed and the following is  
688 substituted in lieu thereof:

689 (a) If any marital deduction would not be  
690 allowed by reason of Section 2056(d)(1) of the  
691 Internal Revenue Code of 1986 with respect to any  
692 interest in property passing under any will, trust  
693 agreement or other governing instrument because  
694 such interest fails to comply with the  
695 requirements of Sections 2056(d)(2)(A) and  
696 2056A(a) of said code, the Superior Court AND THE  
697 COURTS OF PROBATE, PURSUANT TO THE PROVISIONS OF  
698 SECTION 45a-175, AS AMENDED BY THIS ACT, shall  
699 have jurisdiction over any action brought to  
700 reform such will, trust agreement or other  
701 governing instrument to comply with those  
702 requirements so as to allow a marital deduction  
703 under Section 2056(a) of said code. All references  
704 contained in this section to any section of the  
705 Internal Revenue Code of 1986 shall mean that  
706 section of the Internal Revenue Code of 1986, or  
707 any subsequent corresponding internal revenue code  
708 of the United States, as from time to time  
709 amended.

710 (b) The Superior Court AND THE COURTS OF  
711 PROBATE HAVING JURISDICTION UNDER SUBSECTION (a)  
712 OF THIS SECTION shall be empowered to reform any  
713 such will, trust agreement or other governing  
714 instrument to the extent necessary to ensure the  
715 allowance of the marital deduction described in  
716 subsection (a) of this section.

717 (c) Any reformation of any will, trust  
718 agreement or other governing instrument in  
719 accordance with the provisions of this section  
720 shall be effective whether or not a disclaimer has  
721 been filed within the period of time specified in  
722 sections 45a-578 to 45a-585, inclusive.

723 (d) This section shall be applicable to any  
724 action commenced to reform any such will, trust  
725 agreement or other governing instrument created by  
726 a decedent dying on or after November 10, 1988.

727 Sec. 14. Section 45a-144 of the general  
728 statutes is repealed and the following is  
729 substituted in lieu thereof:

730 (a) Any person claiming to be aggrieved by  
731 the breach of a probate bond, as representative of  
732 the estate in connection with which the bond was  
733 given, or in his own right or in the right of  
734 himself and all others having an interest in the  
735 estate, may bring an action IN THE COURT OF  
736 PROBATE IN WHICH THE BOND WAS GIVEN OR IN THE



737 SUPERIOR COURT to recover for the breach in his  
738 own name. [under the following conditions: (1)  
739 Before bringing the action, the person shall  
740 secure the consent of the judge of the court of  
741 probate in which the bond was given; (2) if the  
742 probate judge refuses to grant permission, the  
743 person may make written application to a judge of  
744 the Superior Court before which the proposed  
745 action will be returnable. Upon receipt of the  
746 application the Superior Court judge shall issue a  
747 rule to show cause why permission should not be  
748 granted, specifying a time when, and place where,  
749 the matter will be heard and directing that it be  
750 served in a manner which he deems proper, upon the  
751 representative of the estate, if he is not the  
752 applicant, and upon other persons who appear to  
753 have an interest in the matter. If the judge, upon  
754 hearing, finds that just cause exists for the  
755 bringing of the action, he shall grant permission  
756 to the applicant to bring it.]

757 (b) If [, upon an application made] AN ACTION  
758 IS BROUGHT by one not acting as a representative  
759 of the estate [,] AND the judge concludes that the  
760 action ought to be prosecuted on behalf of all  
761 persons interested in the estate in connection  
762 with which the bond was given, [he] THE JUDGE may  
763 order that [, if] the action [is brought by the  
764 applicant, it] shall be brought on behalf of all  
765 such persons; but, in that event, such persons  
766 need not be named in the writ or complaint.

767 (c) [When permission to bring the action is  
768 granted to the representative of the estate or to  
769 one acting on behalf of himself and all others  
770 interested in the estate, the] THE judge shall  
771 require that the [applicant] PERSON BRINGING THE  
772 ACTION give a bond, with sufficient surety, in an  
773 amount acceptable to [him] THE JUDGE, in the  
774 nature of a probate bond. The bond shall be  
775 conditioned upon the [applicant's] PLAINTIFF'S  
776 well and truly accounting for any moneys recovered  
777 in the action and for his doings in connection  
778 with the action and with the securing of payment  
779 of any moneys adjudged to be due. [If permission  
780 to bring the action is granted by a judge other  
781 than the judge of probate, the] THE bond shall be  
782 [transmitted] FILED, with the endorsement of its  
783 acceptance, [to] IN the court of probate in which  
784 the estate is in settlement. [, and shall be filed

785 there.] If the action is brought by a  
786 representative of the estate and the judge deems  
787 the bond already given by him sufficient to cover  
788 any amount which may be recovered in the action,  
789 no additional bond need be required.

790 (d) The plaintiff in any action brought by  
791 him as representative of the estate or on his  
792 behalf and that of all persons interested in it  
793 shall account for any moneys recovered to the  
794 court of probate in which the estate is in  
795 settlement. The court may allow to the plaintiff a  
796 reasonable sum for his disbursements and services  
797 in the action and in any subsequent proceedings to  
798 enforce payment of any sum recovered, to be paid  
799 from the amount recovered or by the estate.

800 Sec. 15. Section 17a-11 of the general  
801 statutes, as amended by section 5 of public act  
802 97-272, is repealed and the following is  
803 substituted in lieu thereof:

804 (a) The commissioner may, in his discretion,  
805 admit to the department on a voluntary basis any  
806 child or youth who, in his opinion, could benefit  
807 from any of the services offered or administered  
808 by, or under contract with, or otherwise available  
809 to, the department. Application for voluntary  
810 admission shall be made in writing by the parent  
811 or guardian of a child under fourteen years of age  
812 or by such person himself if he is a child  
813 fourteen years of age or older or a youth.

814 (b) A child or youth voluntarily admitted to  
815 the department shall be deemed to be within the  
816 care of the commissioner until such admission is  
817 terminated. The commissioner shall terminate the  
818 admission of any child or youth voluntarily  
819 admitted to the department within ten days after  
820 receipt of a written request for termination from  
821 a parent or guardian of any child under fourteen  
822 or from a child if fourteen years of age or over,  
823 or youth, unless prior to the expiration of that  
824 time the commissioner has sought and received from  
825 the Superior Court an order of temporary custody  
826 as provided by law. The commissioner may terminate  
827 the admission of any child or youth voluntarily  
828 admitted to the department after giving reasonable  
829 notice in writing to the parent or guardian of any  
830 child under fourteen years of age and to a child  
831 over fourteen, and to any youth. Any child or  
832 youth admitted voluntarily to the department may

833 be placed in, or transferred to, any resource,  
834 facility or institution within the department or  
835 available to the commissioner except Long Lane  
836 School, provided the commissioner shall give  
837 written notice to such child or youth and to the  
838 parent or guardian of the child of his intention  
839 to make a transfer at least ten days prior to any  
840 actual transfer, unless written notice is waived  
841 by those entitled to receive it, or unless an  
842 emergency commitment of such child is made  
843 pursuant to section 17a-502.

844 (c) Not more than one hundred twenty days  
845 after admitting a child or youth on a voluntary  
846 basis, the department shall petition the Probate  
847 Court FOR THE DISTRICT IN WHICH A PARENT OR  
848 GUARDIAN OF THE CHILD OR YOUTH RESIDES for a  
849 determination as to whether continuation in care  
850 is in the child's best interest and, if so,  
851 whether there is an appropriate case service plan.  
852 Upon receipt of such application, the court shall  
853 set a time and place for hearing to be held within  
854 thirty days of receipt of the application, unless  
855 continued by the court for cause shown. The court  
856 shall order notice of the hearing to be given by  
857 [certified mail, return receipt requested,]  
858 REGULAR MAIL at least five days prior to the  
859 hearing to the Commissioner of Children and  
860 Families, AND BY CERTIFIED MAIL, RETURN RECEIPT  
861 REQUESTED, AT LEAST FIVE DAYS PRIOR TO THE HEARING  
862 TO the parents or guardian of the child and the  
863 minor, if over twelve years of age. If the  
864 whereabouts of the parent or guardian are unknown,  
865 or if delivery cannot reasonably be effected, then  
866 notice shall be ordered to be given by  
867 publication. In making its determination the court  
868 shall consider the items specified in subsection  
869 (d) of this section.

870 (d) Not more than twelve months after a child  
871 or youth is admitted to the department on a  
872 voluntary basis, the commissioner shall file a  
873 motion in the Probate Court FOR THE DISTRICT IN  
874 WHICH A PARENT OR GUARDIAN OF THE CHILD OR YOUTH  
875 RESIDES requesting a dispositional hearing on the  
876 status of the child or youth. Upon receipt of such  
877 motion, the court shall set a time and place for  
878 hearing to be held within thirty days of receipt  
879 of the motion, unless continued by the court for  
880 cause shown. The court shall order notice of the

881 hearing to be given in accordance with subsection  
882 (c) of this section. At the dispositional hearing,  
883 all parties shall be heard and oral or written  
884 reports, containing recommendations as to the best  
885 interests of the child or youth may be presented.  
886 In determining its order of disposition, the court  
887 shall consider among other things: (1) The  
888 appropriateness of the department's plan for  
889 service to the child or youth and his family; (2)  
890 the treatment and support services that have been  
891 offered and provided to the child or youth to  
892 strengthen and reunite the family; (3) if return  
893 home is not likely for the child or youth, the  
894 efforts that have been made or should be made to  
895 evaluate and plan for other modes of care; and (4)  
896 any further efforts which have been or will be  
897 made to promote the best interests of the child or  
898 youth. At the conclusion of the hearing, the court  
899 shall, in accordance with the best interests of  
900 the child or youth, enter an appropriate order of  
901 disposition. The order may: (A) Direct that the  
902 services being provided, or the placement of the  
903 child or youth and reunification efforts, be  
904 continued if the court, after hearing, determines  
905 that continuation of the child or youth in  
906 services or placement is in the child or youth's  
907 best interests or (B) direct that the child or  
908 youth's services or placement be modified to  
909 reflect the child or youth's best interest. The  
910 court shall possess continuing jurisdiction in  
911 proceedings under this section and shall conduct a  
912 further [depositional] DISPOSITIONAL hearing  
913 whenever it deems necessary or desirable, but at  
914 least every twelve months.

915 (e) The commissioner shall adopt regulations  
916 in accordance with chapter 54 describing the  
917 documentation required for voluntary admission and  
918 for informal administrative case review, upon  
919 request, of any denial of an application for  
920 voluntary admission.

921 (f) Any person aggrieved by a decision of the  
922 commissioner denying voluntary services may appeal  
923 such decision through an administrative hearing  
924 held pursuant to chapter 54.

925 (g) Notwithstanding any provision of sections  
926 17a-1 to 17a-26, inclusive, and 17a-28 to 17a-49,  
927 inclusive, to the contrary, any person already  
928 under the care and supervision of the Commissioner

929 of Children and Families who has passed his  
930 eighteenth birthday but has not yet reached his  
931 twenty-first birthday, may be permitted to remain  
932 voluntarily under the supervision of the  
933 commissioner, provided said commissioner, in his  
934 discretion determines that such person would  
935 benefit from further care and support from the  
936 Department of Children and Families.

937 (h) UPON MOTION OF ANY INTERESTED PARTY IN A  
938 PROBATE COURT PROCEEDING UNDER THIS SECTION, THE  
939 PROBATE COURT OF RECORD MAY TRANSFER THE FILE FOR  
940 CAUSE SHOWN TO A PROBATE COURT FOR A DISTRICT  
941 OTHER THAN THE DISTRICT IN WHICH THE INITIAL OR  
942 DISPOSITIONAL HEARING WAS HELD. THE FILE SHALL BE  
943 TRANSFERRED BY THE PROBATE COURT OF RECORD MAKING  
944 COPIES OF ALL RECORDED DOCUMENTS IN THE COURT  
945 FILE, CERTIFYING EACH OF THEM, AND DELIVERING THE  
946 CERTIFIED COPIES TO THE PROBATE COURT TO WHICH THE  
947 MATTER IS TRANSFERRED.

948 Sec. 16. Section 45a-257a of the general  
949 statutes is repealed and the following is  
950 substituted in lieu thereof:

951 (a) If a testator fails to provide by will  
952 for the testator's surviving spouse who married  
953 the testator after the execution of the will, the  
954 surviving spouse shall receive the same share of  
955 the estate the surviving spouse would have  
956 received if the decedent left no will unless: (1)  
957 It appears from the will that the omission was  
958 intentional; or (2) the testator provided for the  
959 spouse by transfer outside the will and the intent  
960 that the transfer be in lieu of a testamentary  
961 provision is shown by the testator's statements,  
962 or is reasonably inferred from the amount of the  
963 transfer or other evidence.

964 (b) In satisfying a share provided in  
965 subsection (a) of this section, devises and  
966 legacies made by the will abate in accordance with  
967 section 45a-426.

968 (c) A SURVIVING SPOUSE RECEIVING A SHARE  
969 UNDER THIS SECTION MAY NOT ELECT TO TAKE A  
970 STATUTORY SHARE UNDER SECTION 45a-436.

971 Sec. 17. Section 45a-257e of the general  
972 statutes is repealed and the following is  
973 substituted in lieu thereof:

974 [The revocation of any will by divorce,  
975 annulment or dissolution of marriage,] ANY WILL  
976 executed on or after October 1, 1967, and prior to

977 January 1, 1997, shall be [in accordance with]  
978 GOVERNED BY the provisions of section 45a-257 of  
979 the general statutes, revision of 1958, revised to  
980 January 1, 1995, CONCERNING THE REVOCATION OF A  
981 WILL BY MARRIAGE, DIVORCE, ANNULMENT, DISSOLUTION  
982 OR BIRTH OR ADOPTION OF A MINOR CHILD.

983 Sec. 18. Subsection (e) of section 1-56b of  
984 the general statutes is repealed and the following  
985 is substituted in lieu thereof:

986 (e) If a conservator of the estate of the  
987 principal is appointed, [after the occurrence of  
988 the disability or incompetence of the principal,]  
989 the power of attorney shall cease at the time of  
990 the appointment, and the person acting under the  
991 power of attorney shall account to the conservator  
992 rather than to the principal. If the principal  
993 dies, the power of attorney shall cease at the  
994 time of the principal's death, and the person  
995 acting under the power of attorney shall account  
996 to the fiduciary of the principal's estate.

997 Sec. 19. Section 1-56j of the general  
998 statutes is repealed and the following is  
999 substituted in lieu thereof:

1000 If a conservator of the estate of the  
1001 principal is appointed, [after the occurrence of  
1002 the disability or incapacity,] the power of  
1003 attorney shall cease at the time of the  
1004 appointment and the person acting under the power  
1005 of attorney shall account to the conservator  
1006 rather than to the principal.

1007 Sec. 20. Section 45a-317 of the general  
1008 statutes is repealed and the following is  
1009 substituted in lieu thereof:

1010 (a) The temporary administrator or officer  
1011 appointed pursuant to the provisions of section  
1012 45a-316 shall take immediate possession of all the  
1013 real and personal property of the deceased,  
1014 collect the rents, debts and income thereof and do  
1015 any additional acts necessary for the preservation  
1016 of the estate that the court authorizes.

1017 (b) Such administrator or officer may be  
1018 authorized by the court to sell any personal  
1019 property of the estate which is perishable in its  
1020 nature or which the court finds cannot be retained  
1021 to advantage, and may be further authorized to  
1022 make up or complete any stock or materials in an  
1023 unfinished state, and to continue any business, so

1024 far as may be necessary for the preservation of  
1025 the same.

1026 (c) Such administrator may be authorized by  
1027 the court to sell OR MORTGAGE any real property of  
1028 the estate.

1029 (d) Such administrator or officer shall file  
1030 forthwith under oath an inventory of all personal  
1031 property of the deceased and, when ordered to do  
1032 so, shall exhibit to the court an account of his  
1033 actions.

1034 (e) Such administrator or officer may be  
1035 removed by the court with or without notice and a  
1036 successor appointed whenever such action appears  
1037 to the court advisable.

1038 (f) Upon the appointment and qualification of  
1039 the administrator or the administrator with the  
1040 will annexed or the qualification of the executor,  
1041 such temporary administrator or such officer shall  
1042 exhibit forthwith to the court an account of his  
1043 trust and deliver to the administrator, executor  
1044 or administrator with the will annexed all of the  
1045 estate of the deceased remaining in his hands.

1046 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS

\* \* \* \* \*

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

\* \* \* \* \*

**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5730**

STATE IMPACT	Potential Minimal Savings, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Probate Courts, Judicial Department, Department of Children and Families

**EXPLANATION OF ESTIMATES:**

STATE IMPACT: Section 7 transfers the primary responsibility for the compensation of guardian ad litem in paternity claims from the Probate Court Administration Fund (PCAF) to the petitioner. Although the probate court must pay if the petitioner is unable, to the extent that petitioners do have the ability to pay passage of the bill would result in potential minimal savings to the PCAF. The annual number of such paternity claims brought in probate court is small, but it should be noted that guardian ad litem are paid \$25/hr.

Section 15 eliminates a requirement that the Adoption Review Board send notices of hearings to the judge of probate and to all other involved parties in an adoption proceeding via certified mail. The Department of Children and Families will experience a minimal savings as these notices will be sent by regular mail.

Finally, there are a few sections in the bill which give the probate court concurrent jurisdiction with the Superior Court in specified areas. It is anticipated that these modifications would result in potential caseload reductions and savings to the Judicial



Department. With the exception of aforementioned sections, the majority of proposed changes in the bill are technical in nature and passage would not result in any additional fiscal impact to the state.

\* \* \* \* \*

### OLR BILL ANALYSIS

sHB 5730

#### AN ACT CONCERNING PROBATE MATTERS

**SUMMARY:** This bill makes the following changes to the probate law:

1. eliminates the requirement for the court to appoint a three-judge panel to hear commitment cases concerning people with tuberculosis;
2. gives the probate court jurisdiction, concurrent with the Superior Court, to reform wills, trusts, or other governing instruments;
3. allows the probate court to authorize temporary administrators of decedents' estates to mortgage, instead of just sell, real estate;
4. transfers from the probate court to the petitioner, primary responsibility for compensating a guardian ad litem in paternity cases;
5. requires a power of attorney to end whenever a conservator of the estate is appointed, rather than just in cases where the principal is disabled or incapacitated;
6. gives the probate court jurisdiction, concurrent with the Superior Court, to hear actions on probate bonds;
7. broadens the court's jurisdiction over certain fiduciary accounts;
8. prohibits a spouse eligible for an intestate share of a deceased spouse's estate from also

claiming a statutory share of that estate;

9. specifies where the court may conduct its periodic review of children placed for services with the Department of Children and Families (DCF);
10. eliminates, in several types of cases, the manner in which the court must notify interested parties;
11. specifies that wills executed between October 1, 1967 and January 1, 1997 continue to be revoked by the subsequent birth or adoption of a child or by marriage; and
12. makes technical changes.

EFFECTIVE DATE: October 1, 1998

#### **FURTHER EXPLANATION**

##### **Commitment of People with Tuberculosis (Sec. 6)**

By law, municipal health directors may issue a 96-hour emergency commitment order for the detention of a person in a medical facility if he has active infectious tuberculosis and his behavior poses a substantial likelihood of transmitting the disease to others. Upon issuing the order, the health director must immediately petition the probate court to determine whether to continue the commitment. The probate court administrator must appoint a three-judge panel to hold a hearing within 76 hours of when the health director issued the commitment order.

The bill eliminates the court's duty to appoint a three-judge panel in all cases and instead requires the panel only if the respondent or the court requests it. The bill specifies that if a motion is filed, the hearing must be held within 72 hours of the motion.

##### **Reformation of Will or Trusts (Sec. 13)**

The bill gives the probate court jurisdiction, concurrent with the Superior Court, to reform a will, trust agreement, or other governing instrument to take advantage of marital deductions under the Internal

Revenue Code.

**Compensating Guardian Ad Litem in Paternity Cases**  
**(Sec. 7)**

By law, putative fathers may file claims for paternity in probate court at any time, but no later than 60 days after notice of termination of parental rights. If the claim is concerning a minor child born out of wedlock, the court must hold a hearing. The minor child must be made a party to the action and must be represented by a court-appointed guardian ad litem. If the claimant father or mother of the child is a minor, the court must also appoint a guardian ad litem to represent them. The court must pay for the guardian from the Probate Court Administration Fund.

The bill transfers primary responsibility for the guardian's compensation from the Probate Court Administration Fund to the petitioner. If the petitioner is unable to pay, then the fund must pay.

**Fiduciary Accounts (Sec. 10)**

By law, the probate court has jurisdiction over interim and final accounts of certain fiduciaries. The bill gives the probate court jurisdiction over a corporate trustee that maintains any office in the district. Current law provides jurisdiction over the account only if the trustee had its principal office in the district.

Current law gives the probate court jurisdiction over the accounts of trustees of deceased settlors or grantors (a settlor or grantor may create a trust). The bill provides that the court with jurisdiction over the estate of the decedent and the court located in the district where grantor or settlor resided immediately prior to death has jurisdiction. Under current law, only the former has jurisdiction.

The bill authorizes multiple trustees of a trust to file an accounting in the district where any one of them has any business, instead of his principal place of business.

**Children Voluntarily Placed with the Department of**

**Children and Families (DCF) (Sec. 15)**

The law requires the probate court to periodically review the cases of children voluntarily placed for services with the DCF. The bill specifies that the review is to be conducted by the probate court where the child's parents or guardian live. It allows this probate court, upon the motion of any interested party and for cause, to transfer the case file to another probate court. The probate court of record must copy all documents in the file, certify them, and deliver them to the receiving court. The bill requires the court to use regular, rather than certified, return receipt requested, mail to inform the DCF commissioner before a hearing.

The bill requires a power of attorney to end whenever a conservator of the estate is appointed, rather than just in cases where the principal is disabled or incapacitated.

**Notice of Insolvent Estates (Sec. 11)**

The bill transfers from the fiduciary of an alleged insolvent estate to the probate court the duty to publish newspaper notice of the alleged insolvency and to notify interested parties of their right to be heard. The bill requires the newspaper notice to include the right of interested parties to be heard and the time, date, and place of the hearing. The bill requires the court to give interested parties such other notice as it directs.

**Notice (Secs. 1-5 and 12)**

The bill eliminates the manner in which the court must provide notice to interested parties in a variety of cases and instead simply requires the court to give them notice. Specifically, it eliminates a requirement for the court to:

1. give public notice of a hearing on any application to compromise or settle a claim;
2. send by certified mail, return receipt requested, a copy of an application to admit a decedent's will to probate or to administer a decedent's estate to the Department of

Administrative Services or the Department of Veteran's Affairs if the decedent, his spouse, or children received state assistance;

3. send by certified mail notice of a hearing on an application for appointment of a guardian for people with mental retardation;
4. send by certified or registered mail notice of hearings on applications for adoption before the Adoption Review Board;
5. send by certified or registered mail notice of hearings on applications for the involuntary appointment of conservators; and
6. send by regular mail notice of the appointment of a guardian for a minor. The law continues to require the minor, if over age 12, to be notified by certified mail.

## **BACKGROUND**

### **Temporary Administrators**

The probate court may appoint a temporary administrator upon the application of a creditor or other party interested in the estate of a deceased person to protect the property until the will is probated or an administrator is appointed.

### **Fiduciary**

A fiduciary is a person, such as an executor, administrator, or trustee, with legal authority to act on behalf of another person.

### **Spousal Share of an Estate**

A spouse who is inadvertently left out of a deceased spouse's will because it was executed before marriage may elect to take an intestate share. The spouse can only take the intestate share if she was not purposefully left out of the will. The intestate share is that part of the estate that the spouse would get if the decedent had not left a will.

### **Related Bill**

sHB 5468, favorably reported by the Judiciary Committee makes jurisdictional, financial, and procedural changes to the probate laws, including a provision giving the court jurisdiction, concurrent with Superior Court, to reform wills, trusts, or other governing instruments.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 39      Nay 0